

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireline Broadband Infrastructure)	WC Docket No. 17-84
Development by Removing Barriers to)	
Infrastructure Investment)	

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA) supports the Commission’s affirmation and codification of its longstanding precedent regarding overlashing of facilities, including precedent permitting overlashing without prior approval of the pole owner.¹ As explained below, the Commission’s approach has successfully promoted the efficient deployment of new facilities without sacrificing network safety or reliability. Indeed, the Commission’s overlashing policy is an essential component of the Commission’s efforts to promote facilities deployment.

Overlashing refers to the practice of installing new facilities by attaching them to existing facilities that previously were approved by the pole owner. The typical scenario for a cable operator involves lashing a new fiber optic cable to an existing coaxial cable.² Overlashing is often the most efficient way for a cable operator to increase the capability of its network and serve customers through the addition of fiber.

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 17-154 at ¶¶ 160-62 (rel. Nov. 29, 2017) (*Further Notice*).

² *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, 6805 ¶ 59 (1998) (*1998 Order*) (“Overlashing, whereby a service provider physically ties its wiring to other wiring already secured to the pole is routinely used to accommodate additional strands of fiber or coaxial cable on existing pole attachments.”).

As explained in the *Further Notice*, for over two decades the Commission has had a consistent policy that encourages overlashing. The Common Carrier Bureau first addressed the issue in a 1995 notice “cautioning owners of utility poles against restricting cable operators from overlashing their own pole attachments with fiber optic cable.”³ In a 1998 decision, the Commission noted the importance of overlashing as an efficient technique for deploying fiber and the anticompetitive effects that would result if pole owners could unreasonably prevent or delay the use of overlashing, concluding that there was “no persuasive reason to change the Commission’s policy that encourages overlashing.”⁴ In 2001, the Commission affirmed its “policy that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment.”⁵ The United States Court of Appeals for the D.C. Circuit upheld that decision, confirming that “[o]verlashers are not required to give prior notice to utilities before overlashing.”⁶

From NCTA’s perspective, the Commission’s policy of encouraging unrestricted overlashing, including its decision to prohibit prior approval requirements for overlashing, is a critical element of the regulatory foundation on which hundreds of billions of dollars of new investment have been made. Broadband was in its infancy at the time the Commission first addressed overlashing, and since that time, cable operators have deployed over 500,000 route

³ *Id.* at 6806, ¶ 60, citing *Common Carrier Bureau Cautions Owners of Utility Poles*, Public Notice, DA 95-35 (Jan. 11, 1995).

⁴ *Id.* at 6807, ¶ 64.

⁵ *Amendment of Commission’s Rules and Policies Governing Pole Attachments*, CS Docket Nos. 97-98 and 97-151, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12141 ¶ 75 (2001).

⁶ *Southern Company v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002). *See also Cable Television Ass’n of Georgia v. Georgia Power Co.*, File Nos. PA 01-002, Order, 18 FCC Rcd 16333, 16340-41, ¶ 13 (EB 2003) (Contract provision giving utility 30 days to approve or deny overlashing request is “unjust and unreasonable on its face.”).

miles of fiber, enabling state-of-the-art broadband services to well over 90 percent of all Americans. These fiber facilities also have enabled the cable industry to become a significant new competitive presence in the market for Business Data Services and other commercial services, including backhaul services that will be essential to the development of 5G wireless services.⁷

The Commission's decision to affirm its longstanding precedent on overbuilding provides greater certainty to cable operators that continue to face resistance from utilities. All major cable operators have plans for significant new deployment of fiber and other advanced facilities over the next few years.⁸ By continuing to deploy fiber deeper into their networks, cable operators will be able to offer the next generation of broadband services to residential and commercial customers. The Commission already has taken significant steps to improve the business case for making such investments, e.g., by eliminating Title II regulation for broadband services,⁹ and codifying the Commission's long-held precedent will further help to prevent pole owners from undermining the Commission's efforts.

⁷ See *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, ¶¶ 55-62 (2017).

⁸ See Comments of NCTA – The Internet & Television Association, WC Docket No. 17-84 (filed June 15, 2017) at 2.

⁹ *Restoring Internet Freedom*, WC 17-108, Declaratory Ruling, Report and Order, and Order, FCC 17-166 (rel. Jan. 4, 2018).

For all the reasons explained above, NCTA appreciates the Commission's continuing support of its policy that encourages overbuilding, including its prohibition on prior approval requirements from pole owners.

Respectfully submitted,

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January 17, 2018